

EX PARTE OR LATE FILED

ORIGINAL

IRWIN, CAMPBELL & TANNENWALD, P.C.

ATTORNEYS AT LAW
1320 EIGHTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036
(202) 728-0400
FAX (202) 728-0354

PETER TANNENWALD
(202) 728-0401 Ext. 105

October 17, 1995

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

**Re: Report of Ex Parte Communication
MM Docket No. 87-268**

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, submitted herewith for inclusion in the docket file are an original and one copy of an ex parte written communication from Sherwin Grossman, President of the Community Broadcasters Association, to Chairman Reed E. Hunt, concerning the above-referenced pending rule making proceeding.

Very truly yours,



Peter Tannenwald

Attachment

cc: (w/o att) Mr. Sherwin Grossman

No. of Copies rec'd
List ABCDE

021

CBA COMMUNITY
BROADCASTERS
ASSOCIATION

Sherwin Grossman
President
Sherjan Broadcasting Co, Inc.
Miami, Florida

Warren L. Trumbly
Vice President
Polar Broadcasting
Sacramento, California

Jud Colley
Treasurer
Beach-TV
Panama City, Florida

Robert Raff
Secretary
Station KBTR
Junction City, Kansas

Directors:
Louis Jenkins
Station W19AW
Baton Rouge, Louisiana

John Riplinger
South Central Communication Corp.
Evansville, Indiana

Lawrence Rogow
World Television
Los Angeles, California

Peter Tannenwald
General Counsel
Irwin, Campbell & Tannenwald, P.C.
Washington, D.C.

October 9, 1995

Chairman Reed Hundt
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Dear Chairman Hundt,

Last week, Jud Colley and I on behalf of the Community Broadcasters Association met with Julius Genachowski of your staff, as well as with the staffs of the other Commissioners concerning the future of LPTV and ATV. At those meetings, as well as elsewhere, I have been asked again and again how many LPTV stations really operate as locally based businesses with local programming.

Some interesting figures have recently come to light. K/B Data in Milwaukee has compiled a list of 364 LPTV stations whose programming is important enough to have their audiences traced by the Nielsen ratings service. So at least that many stations, while they may be licensed under Part 74 of the Rules, are operating their businesses and behaving like stations licensed under Part 73; we call these stations Community Broadcast stations.

We have just completed a survey of 196 active stations and have learned the following:

- The typical Community Broadcast station has been on the air for two to five years.
- 63% of the stations are commercial, 21% religious, 14% educational
- 63% of the stations are on cable.
- The average number of households reached is 200,000.
- The average number of people reached is 500,000.
- 74% of the stations are on the air 24 hours a day.

CBA COMMUNITY
BROADCASTERS
ASSOCIATION

Sherwin Grossman
President
Sherjan Broadcasting Co, Inc.
Miami, Florida

Warren L. Trumbly
Vice President
Polar Broadcasting
Sacramento, California

Jud Colley
Treasurer
Beach-TV
Panama City, Florida

Robert Raff
Secretary
Station KBTR
Junction City, Kansas

Directors:
Louis Jenkins
Station W19AW
Baton Rouge, Louisiana

John Riplinger
South Central Communication Corp.
Evansville, Indiana

Lawrence Rogow
World Television
Los Angeles, California

Peter Tannenwald
General Counsel
Irwin, Campbell & Tannenwald, P.C.
Washington, D.C.

Chairman R. Hundt

October 9, 1995

Page Two

- 90% of the stations carry children's programming
74% CARRY EXTENSIVE CHILDREN'S
PROGRAMMING
- 100% carry local, live programming.
- 74% are in markets smaller than the top 160
markets and are thus free from the major
impediment to cable must-carry rights.

Indeed, the LPTV experiment has developed into a major success story and does not deserve to be snuffed out by ATV.

To cut Community Broadcasters out of the ATV picture because it is a "secondary" service (and it is secondary in spectrum use only--certainly not in service to the public) is to say that successful experiments should be ignored, which is not the way the Commission has treated experimentation in the past and is not the way that American free enterprise has made our economy what it is today. The public should not be deprived of service it enjoys.

We will be filing written comments on October 18 but there are some major points that deserve your personal attention. It is very important that any technical standards used to develop an allotment table should be readily and equally available to all, not proprietary to any private group.

LPTV stations should be displaced only when no alternative is available. That should be made clear to the engineers developing the ATV allotment table, because otherwise, they will stubbornly continue to ignore LPTV altogether. Further, adequate notice of any proposed allotment table should be given, along with disclosure of all technical standards, so that LPTV stations may recommend changes in individual allotments that will avoid or minimize any adverse impact on them. Technical standards for LPTV/ATV protection should take into account the lower power levels of

CBA COMMUNITY
BROADCASTERS
ASSOCIATION

Sherwin Grossman
President
Sherjan Broadcasting Co, Inc.
Miami, Florida

Warren L. Trumbly
Vice President
Polar Broadcasting
Sacramento, California

Jud Colley
Treasurer
Beach-TV
Panama City, Florida

Robert Raff
Secretary
Station KBTR
Junction City, Kansas

Directors:
Louis Jenkins
Station W19AW
Baton Rouge, Louisiana

John Riplinger
South Central Communication Corp.
Evansville, Indiana

Lawrence Rogow
World Television
Los Angeles, California

Peter Tannenwald
General Counsel
Irwin, Campbell & Tannenwald, P.C.
Washington, D.C.

Chairman R. Hundt
October 9, 1995
Page Three

ATV. I believe 120-180 days would be sufficient time for each affected station to hire an engineer to solve that station's problems within the proposed standards. Remember that the engineers will be swamped with work when the table comes out, so it will take time to solve all the problems that the table may cause. ATV has been actively worked on since 1972; now that you are ready to adopt the Grand Alliance technical standards that will finally give us the technical standards we need to evaluate an allotment table, let us not rush so fast to judgement that we shatter the countryside in the process.

People keep telling me that the table will be too complicated to change, but that is just not so. As an illustration, I took the allocation plan the Commission released January 16, 1995, which would have displaced my LPTV station in Miami for an ATV allotment at Islamorada in the Florida Keys, where there are hardly any people. By the mere substitution exchange of of a different ATV co-channel 140 miles away, my engineer was able to avoid displacement of my station. That station is worth saving. Besides a huge investment that would not be lost, we provide a very important service to the Hispanic community of Miami. According to Nielsen, over 75,000 households tune into us once for fifteen minutes at least once a week. We are the fastest growing television station of *any* class in Miami.

LPTV stations should be given an opportunity to apply for any remaining ATV spectrum in addition to the opportunity which will be given for existing full power stations to apply, before the general public may apply. Once an LPTV station migrates to ATV, it should be permanent status.

What we really need and what can help everything else fall into place is for the Commission when it releases its proposed ATV allotment table to say officially that it will allow adequate time for LPTV stations to solve their problems, and that *the Commission is interested in saving the service.*

CBA COMMUNITY
BROADCASTERS
ASSOCIATION

Sherwin Grossman
President
Sherjan Broadcasting Co, Inc.
Miami, Florida

Warren L. Trumbly
Vice President
Polar Broadcasting
Sacramento, California

Jud Colley
Treasurer
Beach-TV
Panama City, Florida

Robert Raff
Secretary
Station KBTR
Junction City, Kansas

Directors:
Louis Jenkins
Station W19AW
Baton Rouge, Louisiana

John Riplinger
South Central Communication Corp.
Evansville, Indiana

Lawrence Rogow
World Television
Los Angeles, California

Peter Tannenwald
General Counsel
Irwin, Campbell & Tannenwald, P.C.
Washington, D.C.

Chairman R. Hundt
October 9, 1995
Page Four

LPTV station owners who are actively serving their communities have earned the right to have an ATV channel before new channels are opened up to the general public, and no full power station need be left out. If it is the Commission's decision to place all the channels up for auction, then LPTV stations should have the right to bid in that auction along with any benefits afforded to small businesses in the auction.

These stations went on the air without subsidies, without must carry, performing to the highest standards of the Communications Act of 1934 and for the most part are a credit to the broadcasting industry. Speaking on behalf of both myself and the CBA we deserve better treatment than we have received so far. We have been told that the LPTV issue was discussed by the Staff but was postponed for consideration in later rounds of comments. Putting the issue off will not make it go away; it will only make it more difficult. The needs of LPTV must be addressed now, because LPTV service is too important to the public. Let's face it now and move everyone into the ATV year together.

Very truly yours,



Sherwin Grossman, President
COMMUNITY BROADCASTERS ASSOCIATION

cc: Commissioner James Quello
Commissioner Rachelle Chong
Commissioner Susan Ness
Commissioner Andrew Barrett
Roy J. Stewart, Esq.
Mr. Keith Larson
Mr. Dwayne Dowtin
Peter Tannenwald ✓
Secretary as Ex Parte Communication re MM Docket
No. 87-268